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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2537

Introduced by Assembly Member V. Manuel Pérez

February 24, 2012

An act to amend Sections 48902 and 48915 of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 2537, as amended, V. Manuel Pérez. Pupil discipline: suspensions and expulsions.

Existing law requires the principal of a school or the principal's designee to notify the appropriate law enforcement agencies of the county or city in which the school is situated of certain unlawful acts committed by a pupil that may result in suspension, expulsion, or criminal liability of the pupil, as specified. Existing law provides that a willful failure to make a report required by these provisions is an infraction punishable by a fine of not more than \$500.

This bill would delete the provision making a violation of that reporting requirement an infraction.

Under existing law, the principal or the superintendent of schools is required to recommend the expulsion of a pupil for certain acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate,

due to the particular circumstance. These acts include the unlawful possession of certain controlled substances, except for the first offense for the possession of marijuana, as specified. For these acts, the governing board of the school district is authorized, but not required, to order the expulsion of the pupil.

This bill would instead require the principal or superintendent of schools to make that recommendation unless he or she determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct. The bill would encourage the principal or superintendent of schools to make that determination as quickly as possible to ensure that the pupil does not lose instructional time. The bill would include the act of possessing an over-the-counter medication or medication prescribed for the pupil by a physician as an additional exception to the act of possessing a controlled substance for purposes of the expulsion provisions described above.

Under existing law, the principal or superintendent of schools is required to immediately suspend, and to recommend expulsion of, a pupil that he or she determines has committed certain acts at school or at a school activity off school grounds, including the ~~unlawful selling of certain controlled substances~~ *possession of a firearm*, and the governing board of the school district is required to order a pupil expelled upon the finding that the pupil did commit one of these acts.

~~This bill, among other things, would include the act of unlawfully selling those controlled substances among the acts for which the principal or the superintendent of schools is required to recommend the expulsion of a pupil, except as specified, but for which the governing board of the school district is authorized, but not required, to order the expulsion of the pupil.~~

This bill would specify that the act of possessing an imitation firearm, as defined, is not an offense for which suspension or expulsion is mandatory, but is an offense for which suspension or expulsion may be imposed.

This bill would declare the intent of the Legislature that the acts enumerated in specified provisions form the exclusive bases for the imposition of suspension or expulsion.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that the acts
2 enumerated in Article 1 (commencing with Section 48900) of
3 Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code
4 form the exclusive bases for the imposition of suspension or
5 expulsion.

6 SEC. 2. Section 48902 of the Education Code is amended to
7 read:

8 48902. (a) The principal of a school or the principal's designee
9 shall, before the suspension or expulsion of any pupil, notify the
10 appropriate law enforcement authorities of the county or city in
11 which the school is situated, of any acts of the pupil that may
12 violate Section 245 of the Penal Code.

13 (b) The principal of a school or the principal's designee shall,
14 within one schoolday after suspension or expulsion of any pupil,
15 notify, by telephone or any other appropriate method chosen by
16 the school, the appropriate law enforcement authorities of the
17 county or the school district in which the school is situated of any
18 acts of the ~~pupils~~ *pupil* that may violate subdivision (c) or (d) of
19 Section 48900.

20 (c) Notwithstanding subdivision (b), the principal of a school
21 or the principal's designee shall notify the appropriate law
22 enforcement authorities of the county or city in which the school
23 is located of any acts of a pupil that may involve the possession
24 or sale of narcotics or of a controlled substance or a violation of
25 Section 626.9 or 626.10 of the Penal Code. The principal of a
26 school or the principal's designee shall report any act specified in
27 paragraph (1) or (5) of subdivision (c) of Section 48915 committed
28 by a pupil or nonpupil on a schoolsite to the city police or county
29 sheriff with jurisdiction over the school and the school security
30 department or the school police department, as applicable.

31 (d) A principal, the principal's designee, or any other person
32 reporting a known or suspected act described in subdivision (a) or
33 (b) is not civilly or criminally liable as a result of making any
34 report authorized by this article unless it can be proven that a false
35 report was made and that the person knew the report was false or
36 the report was made with reckless disregard for the truth or falsity
37 of the report.

(e) The principal of a school or the principal's designee reporting a criminal act committed by a schoolage individual with exceptional needs, as defined in Section 56026, shall ensure that copies of the special education and disciplinary records of the pupil are transmitted, as described in ~~paragraph (6) of subsection (k) of~~ Section ~~1415~~ 1415(6)(k) of Title 20 of the United States Code, for consideration by the appropriate authorities to whom he or she reports the criminal act. Any copies of the pupil's special education and disciplinary records may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).

SEC. 3. Section 48915 of the Education Code is amended to read:

48915. (a) (1) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:

(A) Causing serious physical injury to another person, except in self-defense.

(B) Possession of any knife or other dangerous object of no reasonable use to the pupil.

(C) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for either of the following:

(i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(ii) The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.

~~(D) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.~~

~~(E)~~

(D) Robbery or extortion.

~~(F)~~

(E) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

1 (2) If the principal or the superintendent of schools makes a
2 determination as described in paragraph (1), he or she is encouraged
3 to do so as quickly as possible to ensure that the pupil does not
4 lose instructional time.

5 (b) Upon recommendation by the principal or the superintendent
6 of schools, or by a hearing officer or administrative panel appointed
7 pursuant to subdivision (d) of Section 48918, the governing board
8 of a school district may order a pupil expelled upon finding that
9 the pupil committed an act listed in *paragraph (1) of subdivision*
10 *(a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A*
11 *decision to expel a pupil for an act listed in subparagraph (A), (B),*
12 *(C), (E), or (F) of paragraph (1) of subdivision (a) or in subdivision*
13 *(a), (b), (c), (d), or (e) of Section 48900 any of those acts shall be*
14 *based on a finding of one or both of the following:*

15 (1) Other means of correction are not feasible or have repeatedly
16 failed to bring about proper conduct.

17 (2) Due to the nature of the act, the presence of the pupil causes
18 a continuing danger to the physical safety of the pupil or others.

19 (c) The principal or superintendent of schools shall immediately
20 suspend, pursuant to Section 48911, and shall recommend
21 expulsion of a pupil that he or she determines has committed any
22 of the following acts at school or at a school activity off school
23 grounds:

24 (1) Possessing, selling, or otherwise furnishing a firearm. This
25 subdivision does not apply to an act of possessing a firearm if the
26 pupil had obtained prior written permission to possess the firearm
27 from a certificated school employee, which is concurred in by the
28 principal or the designee of the principal. This subdivision applies
29 to an act of possessing a firearm only if the possession is verified
30 by an employee of a school district. The act of possessing an
31 imitation firearm, as defined in subdivision (m) of Section 48900,
32 is not an offense for which suspension or expulsion is mandatory
33 pursuant to this subdivision and subdivision (d), but it is an offense
34 for which suspension, or expulsion pursuant to subdivision (e),
35 may be imposed.

36 (2) Brandishing a knife at another person.

37 (3) *Unlawfully selling a controlled substance listed in Chapter*
38 *2 (commencing with Section 11053) of Division 10 of the Health*
39 *and Safety Code.*

40 (3)

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

~~(4)~~

(5) Possession of an explosive.

(d) The governing board of a school district shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal or the superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board of a school district may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board of a school district shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study ~~which~~ that meets all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a

1 comprehensive middle, junior, or senior high school, or at an
2 elementary school.

3 (g) As used in this section, “knife” means any dirk, dagger, or
4 other weapon with a fixed, sharpened blade fitted primarily for
5 stabbing, a weapon with a blade fitted primarily for stabbing, a
6 weapon with a blade longer than 3 ½ inches, a folding knife with
7 a blade that locks into place, or a razor with an unguarded blade.

8 (h) As used in this section, the term “explosive” means
9 “destructive device” as described in Section 921 of Title 18 of the
10 United States Code.

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